

ORDINANCE NO. \_\_\_\_

AN ORDINANCE OF THE BOROUGH OF KULPMONT TO PROTECT RESIDENTIAL PROPERTIES FROM ADVERSE IMPACTS OF AIR POLLUTING COMMERCIAL AND INDUSTRIAL FACILITIES AND TO DECLARE AND PROHIBIT CERTAIN ACTIVITIES AS NUISANCES

The following ordinance is hereby adopted by the Council of the Borough of Kulpmont:

Section 1. Purposes and Findings

(a) Purposes. This Ordinance is intended to serve and further the following purposes:

1. To protect and advance the public health, safety and welfare of residents of the Borough;
2. To ensure that air polluting facilities do not adversely impact the health, safety and welfare of residents of the Borough;
3. To create a minimum isolation and buffer distance between residential activities and air polluting facilities which may be incompatible with one another;
4. To minimize the potential for nuisance conditions created by commercial and industrial operations, including noise, odors, dust, smoke, fumes, gases, pollution, emissions of air contaminants, and other similar effects;
5. To declare and prohibit certain activities and conditions which may, or do, constitute nuisances;
6. To exercise the Borough's powers which are conferred upon it by the Borough Code, and the Pa. Pollution Control Act.

(b) Findings. In considering the adoption of this Ordinance, the Borough of Kulpmont makes the following findings:

- (1) This Ordinance is also enacted under the authority of the Pennsylvania Air Pollution Control Act, 35 P.S. §4012, which reserves to municipalities, including Boroughs, the power to enact Ordinances "with respect to air pollution which will not be less stringent than the provisions of this Act, the Clean Air Act, or the rules and regulations promulgated under either this Act or the Clean Air Act".
- (2) The public health, safety and welfare of the residents of the Borough require that air polluting facilities not be conducted in close proximity with residential uses, which are inherently incompatible;
- (3) The Borough's current ordinances do not adequately protect residents of the Borough from the adverse effects of air polluting facilities;
- (4) Air polluting facilities are, or can be with substantial probability, incompatible with the comfort, convenience, health, and welfare of residents of the Borough if conducted in close proximity of residential properties;

- (5) Air polluting facilities that cause noise, odors, and releases of air contaminants, when conducted in close proximity to residential properties, constitute a nuisance.
- (6) Prohibiting air polluting facilities in close proximity to properties on which residents reside can minimize the potential for nuisance conditions and the potential for adverse effects upon the public health, safety and welfare;
- (7) In conformity with 35 P.S. §4012, the requirements imposed by this Ordinance are not “less stringent than the provisions of this [Pennsylvania Air Pollution Control] Act, the Clean Air Act, or the rules and regulations promulgated under either this Act or the Clean Air Act.”
- (8) The Commonwealth of Pennsylvania’s regulations prohibit the following facilities within 300 yards of a school, park or playground: municipal waste landfills (Pa. Code § 273.202 (a)(18)(i)), construction/demolition waste landfills (Pa. Code § 277.202 (a)(15)(i)), waste transfer facilities (Pa. Code § 279.202 (a)(6)(i)), composting facilities (Pa. Code § 281.202 (a)(8)(i)), incinerators or other waste processing facilities (Pa. Code § 283.202 (a)(6)(i)). Incinerators or other waste processing facilities are also prohibited within 300 yards of any occupied dwelling (Pa. Code § 283.202 (a)(3)(ii)).

Section 2. Definitions.

(a) As used in this Ordinance, the following terms shall have the following meanings. If a term is not defined herein, but is defined in the Pa. Air Pollution Control Act, or the federal Clean Air Act, then the definition in such Acts shall apply to this Ordinance.

1. “Air polluting facilities” shall mean for the purposes of this Ordinance:

(a) Any commercial or industrial facility requiring any sort of permit under the Pennsylvania Air Pollution Control Act, or the federal Clean Air Act, for the release of contaminants to the air.

(b) Facilities shall not be defined as “air polluting facilities” solely due to the use (or proposed use) of combustion systems used only to heat the air and/or water in the facility’s buildings.

2. “Facilities” include the land, structures and other appurtenances or improvements where the relevant activities are allowed, permitted, or take place, including the entire lot, parcel or tract of land upon which the Facilities are located.

3. “Residential Properties” shall mean all residential and institutional properties at which people (whether related or unrelated) reside, including but not limited to homes, dwellings, apartments, condominiums, boarding houses, hotels or motels, continuing care facilities, personal-care homes, intermediate-care facilities, or skilled nursing facilities, nursing homes or long term care facilities, prisons, correctional facilities, group homes, mobile homes and mobile home parks. The term shall refer to the entire lot, parcel or tract of land upon which the residential or

institutional use is situated and shall not be limited to the dwelling or building footprint or curtilage.

4. "Person" shall mean any natural person, including any individual.

5. "Entity" shall include any partnership, corporation, association, limited liability company or similar entity, institution, cooperative, enterprise, municipal or state authority, Federal Government or agency, state government or agency, or any other legal entity which is recognized by law as the subject of rights or duties. Said term shall also mean any officer, director, partner, employee, trustee, or other person who acts on behalf of any of the foregoing with respect to a matter governed by this Ordinance, or who authorizes the Entity to act with respect to a matter governed by this Ordinance.

Section 3. Prohibition of Air Polluting Facilities In Close Proximity To Residential Properties.

No Person or Entity shall maintain, erect, construct, utilize or operate any Air Polluting Facilities within three hundred (300) yards of any Residential Properties located within Borough of Kulpmont.

Section 4. Declaration of Nuisance and Provision for Abatement.

It is hereby declared that the operation of any Air Polluting Facilities within three hundred (300) yards of any Residential Properties is a nuisance and is prohibited, and shall be abatable in the manner otherwise provided by law.

Section 5. Limitation of Ordinance to New Facilities and Exclusion of Existing Facilities

The requirements of this Ordinance shall apply only to Facilities whose construction is not complete as of the effective date of this Ordinance. This Ordinance shall not apply to Facilities completely constructed and in operation as of the effective date of this Ordinance.

Section 6. Enforcement, Violations and Penalties.

The enforcement of this Ordinance shall be by action brought before a district justice in the same manner as provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure. Any Person or Entity who shall violate any provision of this ordinance shall, upon conviction thereof, as a summary offense, be sentenced to pay a fine of not more than One Thousand (\$1,000.00) Dollars for each such violation; and shall be subject to imprisonment to the extent allowed by law for the punishment of summary offenses.

Each and every day, or portion thereof, of violation of the prohibitions contained in Sections 3 and 4 hereof shall constitute a distinct and separate offense. A distinct and separate offense shall arise for each section of the Ordinance found to have been violated. Each and every day during which such unlawful construction, utilization, or operation continues shall be deemed a distinct and separate offense. The imposition of the fines and penalties herein prescribed shall not

preclude the Borough from instituting actions at law or in equity to restrain, correct or abate a violation of this Ordinance.

Section 7. Rights and Remedies Cumulative.

This Ordinance is intended to supplement existing law with respect to the subject matter contained herein and is not intended to restrict, limit, or supplant any other remedy for the conduct prohibited in Section 3 and 4 hereof. It is declared to be the purpose of this Ordinance to provide additional and cumulative remedies to protect the public interest. Nothing in this Ordinance shall in any way abridge or alter rights of action or remedies now or hereafter existing in equity, or under the common law or statutory law, criminal or civil with respect to air pollution or nuisances.

Section 8. Severability.

The provisions of this Ordinance are severable and if any provision, sentence, clause, section or part thereof shall be held illegal, invalid, unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of the ordinance or their application to him or to other persons and circumstances. It is hereby declared to be the legislative intent that this Ordinance would have been adopted if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included therein, and if the person or circumstances to which the ordinance or any part thereof is inapplicable had not specifically been exempted therefrom.

Section 9. Repealer

All other Borough Ordinances or resolutions or parts thereof that were adopted prior to this Ordinance and which are inconsistent with this Ordinance are hereby repealed.

Section 10. Enactment and Effective Date.

That this Ordinance shall become effective upon enactment

DULY ENACTED AND ORDAINED THIS      DAY OF              2006.

ATTEST: